

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANNE E. NELSON, ROBERT S. FASH, and)
CRAIG A. HARRIS, Individually and On)
Behalf of All Others Similarly Situated,)
Plaintiffs,)
v.)
THE CITIGROUP PENSION PLAN, and THE)
PLANS ADMINISTRATION COMMITTEE)
OF CITIGROUP, INC., as Plan Administrator,)
Defendants.

) • **CLASS ACTION**

Michael Lonecke, individually and on behalf of)
all others similarly situated,)
Plaintiff,)
v.)
Citigroup Pension Plan, Plans Administration)
Committee of Citigroup, Inc., and Citigroup,)
Inc.,)
Defendants.

) • **CLASS ACTION**

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|---|---|---|
| Raymond Duffy, Individually and On Behalf of All Others Similarly Situated, |) | Civil Action No. 05-CV-6026 (SS) |
| | | <u>CLASS ACTION</u> |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| CITIGROUP, INC., THE CITIGROUP PENSION PLAN, and the PLANS ADMINISTRATION COMMITTEE of CITIGROUP INC., |) | |
| | | |
| Defendants. |) | |

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO
CONSOLIDATE CITIGROUP CASH BALANCE ERISA CASES
AND FOR ENTRY OF THE CASE MANAGEMENT ORDER**

Plaintiffs Anne E. Nelson, Robert S. Fash, Craig A. Harris, Michael Lonecke, and Raymond Duffy (collectively “Plaintiffs”) submit this Memorandum of Law in Support of Plaintiffs’ Motion to Consolidate Citigroup Cash Balance ERISA cases and for entry of the Case Management Order.

INTRODUCTION

The actions captioned above were filed against Citigroup, Inc. (“Citigroup” or the “Company”), Plans Administration Committee of Citigroup, Inc., and/or The Citigroup Pension Plan (the “Plan”), a defined benefit “cash balance” pension plan established and sponsored by Citigroup as a benefit for its employees (these cases are collectively referred to herein as the “ERISA cases”). All three actions are similar and arise from the creation, amendment and modification of the Plan and the resultant alleged violations of relevant terms of the Employee

Retirement Income Security Act of 1974 (“ERISA”). Plaintiffs seek a monetary judgment, and declaratory and injunctive relief pursuant to section 502 of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1132.

Plaintiffs seek an order formally consolidating the ERISA cases, appointing a leadership structure for the consolidated case, and setting forth a preliminary schedule for the proceedings. Defendants have advised that they will not oppose this application.

ARGUMENT

Given the substantial similarity of the parties and claims in the above-captioned actions, plaintiffs have followed the guidance of the *Manual for Complex Litigation, Third Edition* (2002) (“*Manual*”) and submit for the Court’s approval a proposed form of the Case Management Order which provides for the consolidation of these related actions; establishes efficient procedures for the filing and docketing of papers; proposes an organization of Plaintiffs’ counsel; sets forth a preliminary schedule of proceedings; and otherwise eliminates wasteful and duplicative litigation.

Plaintiffs respectfully submit that the Case Management Order should be entered by the Court. The proposed order will not only promote the orderly and efficient conduct of this action, but is also consistent with the recommendations of the *Manual*.

- **A. Consolidation of Related Actions**

According to the Federal Rules of Civil Procedure, “[w]hen actions involving a common question of law or fact are pending before the Court it may order a joint hearing or trial of any or all of the matters at issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delays.” Fed. R. Civ. P. 42(a).

Consolidation of the above-captioned actions is demonstrably appropriate. Each action involves common questions of law and fact, namely allegations that the Plan violated ERISA’s

minimum accrual standards, negatively affecting plaintiffs' and other plan participants' benefits under the Plan. Consolidating these cases will expedite pretrial proceedings and reduce duplicative efforts. Moreover, consolidation will streamline and simplify the discovery phase, pretrial motions (including class certification), and administrative management, as well as generally reduce the waste, confusion and delay that would inevitably arise from prosecuting related actions separately.

- **B. Orderly Procedures for Captioning and Filing Documents**

In addition to providing for consolidation, the proposed order establishes orderly procedures for the captioning, filing and docketing of papers in these related actions, and in any cases that may hereafter be filed in or transferred to this Court. These procedures include the establishment of a uniform caption and master docket for the filing of documents relating to the consolidated actions.

Such procedures, designed to enhance efficiency, are particularly necessary and appropriate in complex class action litigation such as this. *See Manual* § 21.12.

- **C. Organization of Plaintiffs' Counsel**

The Case Management Order further implements the procedures suggested by the *Manual* for complex, multi-party cases such as this by designating lead counsel for plaintiffs. See *Manual* § 20.22. Plaintiffs respectfully submit that such designation will promote the orderly progress of this litigation, and ensure that plaintiffs are able to prosecute this litigation in an efficient and coordinated fashion.

- D. Proposed Co-Lead Counsel**

Plaintiffs propose the following as Lead Counsel:

Edgar Pauk¹
144 East 44th Street, Suite 600
New York, New York 10017
Telephone: (212) 983-4000
Facsimile: (212) 808-9802

and

Milberg Weiss Bershad & Schulman LLP²
One Pennsylvania Plaza
New York, New York 10119
Telephone: (212) 594-5300
Facsimile: (212) 868-1229

E. Responsibilities of Co-Lead Counsel

As suggested by the *Manual*, plaintiffs' Co-Lead Counsel, in full consultation with Co-Executive Counsel for Plaintiffs, is charged with the responsibility for the day-to-day conduct of the litigation and for carrying out the Orders of the Court concerning the conduct of the litigation. Indeed, plaintiffs' Co-Lead Counsel is:

charged with major responsibility for formulating (after consultation with other counsel) and presenting positions on substantive and procedural issues during litigation, ...[for] presenting written and oral arguments and suggestions to the court, working with opposing counsel in developing and implementing a litigation plan, initiating and organizing discovery requests and responses, conducting the principal examination of deponents, employing experts, arranging for support services, and seeing that schedules are met.

Manual at § 20.221. Plaintiffs' Co-Lead Counsel is also charged with responsibility for monitoring the time and expenses of all plaintiffs' counsel to ensure that this litigation is conducted efficiently and without duplication. Defendants reserve their right to object to any application for fees and/or costs, *inter alia*, for failure to satisfy this condition.

¹ See resume of Edgar Pauk, attached as Exhibit A hereto.

² See firm resume of Milberg Weiss Bershad & Schulman LLP attached as Exhibit B hereto.

Co-Lead Counsel, in order to fully utilize the resources and expertise of all Plaintiffs' counsel and effectively and efficiently prosecute this consolidate action, shall perform each of the above duties in full consultation with Co-Executive Committee Counsel for Plaintiffs.

F. Proposed Co-Executive Committee Counsel

Plaintiffs propose the following as Co-Executive Committee Counsel:

Sapir & Frumkin LLP³
399 Knollwood Road, Suite 310
White Plains, New York 10603
Telephone: (914) 328-0366
Facsimile: (914) 682-9128

and

Schiffrin & Barroway, LLP⁴
6135 Barfield Road, Suite 101
Atlanta, Georgia 30328
Telephone: (404) 847-0085

G. Responsibilities of Co-Executive Committee Counsel

Plaintiffs' Co-Executive Committee Counsel shall aid, counsel and consult with Co-Lead Counsel in the fulfillment of the latter's duties and responsibilities as described above. Further, Plaintiffs' Co-Executive Committee shall assist the Lead Counsel in facilitating coordination and communications among counsel for the parties and with the Court and otherwise assist in the coordination of discovery, presentations at pretrial conferences, and other pretrial activities.

As set forth herein, and as demonstrated by their attached firm resumes, proposed Co-Lead and Co-Executive Committee Counsel have substantial and extensive experience in complex litigation such as this, and have successfully represented plaintiffs in ERISA and other complex class action litigation throughout the nation.

³ See Sapir & Frumkin LLP firm resume, attached as Exhibit C hereto.

⁴ See Schiffrin & Barroway, LLP firm resume, attached as Exhibit D hereto.

H. Preliminary Schedule of Proceedings

Finally, the proposed Case Management Order provides for Plaintiffs to file a Consolidated Complaint within 14 days of entry of the Case Management Order and for Defendants to answer or otherwise respond to the Consolidated Complaint within forty-five (45) days of the date the Consolidated Complaint is served on them. In the event defendants file a motion directed at the Consolidated Complaint, the Case Management Order requires that the parties shall meet and confer regarding a schedule for opposition and reply briefing and submit a proposed schedule for the Court's approval.

CONCLUSION

For the foregoing reasons, plaintiffs respectfully request that the Court consolidate these cases and enter the proposed Case Management Order.

DATED: August 23, 2005

Respectfully submitted,

By: _____/s
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[Proposed] Co-Lead Counsel for Plaintiffs

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**[Proposed] Co-Executive Committee
Counsel for Plaintiffs**

